IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No.278 of 2001
in
COMPANY PETITION No.33 of 1983
with
MISC. CIVIL APPLICATION No.5 of 2002
with
MISC. CIVIL APPLICATION No.6 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

O.L.OF ARYODAYA SPG. & WEAVINGMILLS CO.LTD.

Versus

CHARANSINGH DHUPSINGH

Appearance:

1. COMPANY APPLICATION No. 278 of 2001

MR RM DESAI for Petitioner No. 1

MR SURESH M SHAH for Respondent No.1A to 1F

MR KN PATEL for Respondent No.2

MR PJ KANABAR for Respondent No.2 to 61

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 16/04/2004

CAV JUDGEMENT

1. The Judge's Summons have been taken out by the Liquidator of Aryodaya Spinning and Weaving Mills Company

Limited originally seeking following reliefs :-

(a) That Shri Charansingh and 51 other persons, whose names are given in the list annexed hereto be directed to establish their right, interest and title to reside in the property known as Dhupsingh Chali at the premises of Aryodaya Spg. & Wvg. Mills Co. Ltd. (In Liquidation) on land bearing S. No.646, Mouje Asarva, City Taluka, Ahmedabad, now included in Final Plot Mo.4, 10 and 11 of Town Planning Scheme No.XVI (Asarva) Ahmedabad.

(B) It may be declared that Shri Charansingh and 51 others, whose names are given in the list annexed hereto are trespassers and encroachers in the said premises known as Dhupsingh Chali, on land bearing Survey No.646 Mouje Asarva, City and Taluka Ahmedabad now included in Final Plot Mo.4, 10 and 11 of Town Planning Scheme No.XVI (Asarva) Ahmedabad.

(C) That Shri Charansingh and 51 others, whose names are given in the list hereto annexed be directed to hand over the vacant and peaceful possession of the premises in occupation and if they fail to do so be removed from the occupation of the premises known as Dhupsingh Chali, on land bearing Survey No.646 Mouje Asarva, City and Taluka Ahmedabad now included in Final Plot Mo.4, 10 and 11 of Town Planning Scheme No.XVI (Asarva) Ahmedabad."

2. On 17-01-2002, the following order came to be made by this Court :

" Heard Mr DS Vasavda learned counsel for Textile Labour Association and Mr RM Desai learned counsel for the Official Liquidator of Aryodaya Spinning Mills Ltd. and for State Bank of India.

2. In view of the report dated 16th January, 2002 submitted by the Official Liquidator in the present proceedings, it is directed that the Official Liquidator shall give a general notice to the occupants of the chawl that if the occupants do not hand over the vacant and peaceful possession of the premises to the Official Liquidator within one week, the Official Liquidator will take possession of the premises with the police protection as per the orders of

this Court in the present proceedings.

The notice shall be in Hindi and Gujarati.

3. In case the notice is not complied with, it will be open to the Official Liquidator to move the police authorities and thereupon the Police Commissioner, Ahmedabad City shall provide all necessary police protection to the Official Liquidator for recovering possession of the premises from unauthorised occupants and also for removing unauthorised construction put up on the land of Aryodaya Spinning Mills Ltd.

S.O. to 6th February, 2002.

Sd/-

(M.S.Shah,J)

3. Misc. Civil Application No.5 of 2002 has been preferred by respondent Nos.1/A to 1/F and the reliefs sought are as under :-

"10. It is, therefore, prayed that :

a) Your Lordship may be pleased to kindly allow the petitioner No.1 as resp. No.64 and kindly recall the Oral Order (Annexure "A" herein).

b) Pending admission and disposal, kindly direct the respondent not to implement or execute the Order."

4. Similarly, Misc. Civil Application No.6 of 2002 has been preferred by the 54 persons out of 61 persons seeking the following reliefs :-

"7. The applicants therefore, humbly pray to this Hon'ble Court that :-

(A) Your Lordships be pleased to admit and allow this Misc. Civil Application recalling the oral order passed on 17/1/2002 by this Hon'ble Court (Coram : M.S.Shah, J.) in Company Application No.278 of 2001 in Company Petition No.33 of 1983 with Company Application No.284

of 2001 in the facts and the circumstances of the present case and in the interest of justice;

(B) Pending admission, hearing and final disposal of this Misc. Civil Application, Your Lordships be pleased to stay the operation, execution and implementation of the oral order passed on 17/1/2002 in Company Application No.278 of 2001 in Company Petition No.33 of 1983 with Company Application No.284 of 2001 in the facts and circumstances of the present case and in the interest of justice;"

5. Therefore, apparently, the respondent Nos.1/A to 1/F and the 61 persons felt aggrieved by the order made by this Court on 17-01-2002 because, according to them, they were not heard and proper facts had not been placed before this Court; therefore, the prayer to recall the said order of 17-01-2002. Accordingly, this Court vide its order of 22-01-2002 has stayed the operation of the order dated 17-01-2002 subject to the condition that, in the meantime, all the parties shall maintain status quo regarding the property in question. The ad-interim relief which was granted by staying the order on 22-01-2002 has thereafter been continued till further orders. Thereafter the matters have been heard at length from time to time and have ultimately been heard by this Court finally. Though no formal order of recalling the order of 17-01-2002 was made, the respondents have been granted opportunity of hearing. Therefore, rule is made absolute qua Misc. Civil Application No.5 of 2002 and Misc. Civil Application No.6 of 2002 to this limited extent of recalling the order dated 17-01-2002 for the purpose of granting hearing to the applicants of these applications while keeping in abeyance the order and directions made on 17-01-2002.

6. Thereafter vide amendment, granted by this Court on 21-03-2002, following prayers were added :-

"(AA) Declare that the heirs and legal representatives of Shri Dhupsing Charansingh Respondents Nos.1/A to 1/F are encroachers and trespassers and in illegal occupation of the premises in the property known as Dhupsinh's Chawl, Asarwa, Ahmedabad and have no right to remain in the said premises and they may

be removed from the said premises, if necessary by assistance of the Police;

(AB) It may declared that Respondents Nos.1/A to 1/F and Respondent Nos.2 to 61 had no right, title or interest in the premises and are encroachers, trespasser and in illegal occupation of the said premises being Dhupsinh Chawl and be removed from the said premises, if necessary with the assistance of the Police;

(AC) In the affidavit in support of the judges summons in Company Application No.278/2001, Paragraph as mentioned in Annexure 'A' hereto be incorporated."

7. It is necessary to note that originally respondent No.1 was shown as Charansingh Dhupsingh but in Paragraph 5 and 10A to 10F of the application reference is made to Dhupsingh Charansingh and the respondents i.e. respondent Nos.1/A to 1/F are the heirs and legal representatives of Dhupsingh Charansingh; and the said respondents as well as respondent Nos.2 to 61 have all along proceeded on the basis that the reference to Charansingh Dhupsingh is reference to Dhupsingh Charansingh and there is no dispute about the names and descriptions. Accordingly the request of Mr.R.M.Desai, learned Advocate appearing on behalf of the Official Liquidator, was granted by order of 03-12-2003 for correcting the cause-title to correctly describe original respondent No.1 as Dhupsingh Charansingh instead of Charansingh Dhupsingh.

8. Though in earlier orders reference is made to respondent Nos.2 to 61, it is necessary to note that respondent No.2 is one Manubhai Tribuvandas Patel, who claims to be the owner of the land in dispute and thus the person who is said to have leased out the land to Aryodaya Spinning and Weaving Mills Company Limited (hereinafter referred to as 'the Company'). Therefore, wherever reference is to respondent Nos.2 to 61 in the record, in fact the reference is to 61 persons whose names have been annexed with the application.

9. The Official Liquidator of the Company has preferred the application praying for a declaration that respondent Nos.1/A to 1/F are encroachers and trespassers and hence in illegal occupation of the premises i.e. property known as Dhupsingh's Chawl, Asarwa, Ahmedabad; that they have no right to remain in possession of the

premises and that they may be removed from the premises. The Official Liquidator has also further prayed for a declaration that neither respondent Nos.1/A to 1/F nor the 61 persons have any right, title or interest in the premises and hence be declared as encroachers and/or trespassers and being in illegal occupation of the premises be removed, if necessary with the assistance of the police.

10. The Company is a Company registered under the Companies Act, 1913. It had taken on 11-11-1918 the land on lease from one Shri Gordhandas Gulabdas Patel, who was the grandfather of the present respondent No.2 Manubhai Tribuvandas Patel. As per Lease Deed available on record of Company Application No.153 of 1999 the lease was a permanent lease.

11. A part of the land taken on lease was let out by the Company to one Shankarlal Harilal by a Lease Deed dated 28-07-1945 which was registered on 17-11-1945. The land let out to Shankarlal Harilal was only 16 gunthas out of Survey No.646 which admeasured in all 22 + 6 = 28 gunthas of land. The lease was admittedly for agricultural purpose and for a period of five years upto 12-06-1950. It appears that in 1956, the Company filed Civil Suit No.870 of 1956 against Shankarlal Harilal for getting back possession of the land as the possession had not been handed over despite expiry of the period of lease. On 26-04-1958 the said Shankarlal Harilal expired.

12. In the meantime, it appears that Dhupsingh Charansingh had been put in possession of the land in question by Shankarlal Harilal and hence Dhupsingh Charansingh filed an application before the Small Causes Court, Ahmedabad praying for fixation of standard rent on the ground that he was a tenant of the land in question. The said application was dismissed. On 17-10-1962 the Company gave notice to Dhupsingh Charansingh to the effect that he was a trespasser and was required to hand over possession of the land. Dhupsingh Charansingh replied on 04-11-1962 contending that he had got possession of the land through Shankarlal Harilal. The Company, therefore, filed Special Civil Suit No.1034 of 1974 for a decree for possession from Dhupsingh Charansingh. On 18-12-1978 a consent decree was passed. The terms of the consent decree shall be referred to subsequently at an appropriate stage.

13. On 05-05-1989 this Court passed the final order of winding up in Company Petition No.33 of 1983 for winding up the Company and hence, the Official Liquidator

took over possession of the assets of the Company. It is in the aforesaid circumstances that the present application has been moved by the Official Liquidator.

14. On 03-12-2003 this Court, after hearing the learned advocates for the parties, made the following directions :

"12. Hence, it is directed that -

(i) respondent Nos.2 to 61 shall deposit the amounts stated in Annexure "I" to Misc. Civil Application No.6 of 2002 with the Official Liquidator every month regularly and the collection shall be made by Bhupatsingh Dhupsingh, respondent No.1/F herein. The amounts shall be collected for each month by 10th day of the next month and shall be deposited with the Official Liquidator by the 15th day of the said month. The deposits shall be without prejudice to the rights and contentions of the parties and subject to any direction the Division Bench may give in the OJ Appeal or as may be given by this Court thereafter.

(ii) While final directions regarding appropriation of such amounts shall be made later on after disposal of the aforesaid OJ Appeal, the Official Liquidator is permitted to invest the said amounts after deducting the expenses with State Bank of India which is a secured creditor of the Company in liquidation.

(iii) Till final disposal of this application, respondent Nos.1/A to 1/F and respondent Nos.2 to 61 are also restrained from inducting any other person in the premises in question nor shall they part with possession of the said premises or any part thereof in favour of any third party nor shall they encumber any alleged right of theirs over the premises in question in favour of any party.

(iv) In case respondent Nos.1/A to 1/F and respondent Nos.2 to 61 fail to deposit the amounts as aforesaid, it will be open

to the Official Liquidator to move this Court for seeking eviction of the defaulters.

(v) Respondent No.1/F shall file an affidavit giving details of the names of all the occupants and if there is any discrepancy between the names which are to be given now and the names disclosed in Annexure I to Misc. Civil Application No.6 of 2002, the deponent of the affidavit shall also give an explanation for the same. The affidavit as aforesaid shall be filed by 19.12.2003. "

15. Accordingly, one Bhupatsingh Dhupsingh Chaudhary has filed an affidavit dated 19-12-2003 styled as 'COMPLIANCE AFFIDAVIT.' It is stated in Paragraph 3 of the said Affidavit :-

"3. I further say that as per the order of the Hon'ble Court, I have informed orally some of the respondents from amongst respondent Nos.2 to 61 that they are required to pay to me the amount stated in Annexure-"I" to Misc. Civil Application No.6 of 2002 every month and regularly in the first week of every month. However, I am told by those persons that the amount mentioned in Annexure-"I" as aforesaid is due and payable every year and, therefore, I should tell the respondents concerned that how much amount they have to pay to me every month. I say that I intend to inform each of respondent Nos.2 to 61 in writing that how much amount they will have to pay to me in the first week of every month from the amount of yearly rent as mentioned in Annexure-"I" to Misc. Civil Application No.6 of 2002. I will undergo the said exercise before the end of this month i.e. latest by 31/12/2003 and make all the efforts to comply with the direction of this Hon'ble Court given to me as per the said order."

16. Thereafter when the matter came up for hearing on 11-02-2004 this Court made the following order :-

" Heard Mr.S.M.Shah, learned advocate appearing on behalf of respondent Nos.1-A to 1-F. The learned advocate has invited attention to affidavit dated 19th December 2003 made by one Shri Bhupatsingh Dhupsingh Chaudhari stated to be

compliance affidavit of the directions issued by this Court vide order of 3rd December 2003. It is stated in the said affidavit that respondent Nos.2 to 61 were required to pay the amounts stated in Annexure I to Misc. Civil Application No.6 of 2002, but according to those respondents, the amounts stated in Annexure I as aforesaid is due and payable every year. As can be seen from the said Annexure I annexed to MCA No.6/02, the amount of rent is stated, but there is nothing to show that the said amount is payable annually and not monthly. By way of illustration, if the case of one Shri Muralidhar Ganesh at item No.63 is taken into consideration, the amount of rent is stated to be Rs.10/= per annum. As against this, when affidavit dated 13th August 2002 being affidavit in reply on behalf of respondent Nos.2 to 61 is taken into consideration, it is stated in paragraph 2 therein that the said respondents are regularly paying rent to respondent Nos.1-A to 1-F and that respondent Nos.2 to 61 pay taxes to the Ahmedabad Municipal Corporation. At Annexure I (collectively) to the said reply affidavit, copies of tax bills issued to the said respondents by the Ahmedabad Municipal Corporation are placed on record. Taking the case of same gentleman Shri Muralidhar Ganesh, by way of illustration, when municipal bill at page 128 is looked into, it is seen that the annual property tax payable by the said gentleman is Rs.264/-. On the face of it, prima facie, the stand of respondent No.2 as to the figure of rent stated in Annexure I to MCA No.6/02 is unbelievable. When Mr.P.J.Kanabar, learned advocate on behalf of the said respondents, namely respondent Nos.2 to 61 was asked to explain this, he has sought time in this regard. To come up on 19th February, 2004."

17. The learned advocates appearing respectively for the parties have addressed the Court at length as well as invited attention to the written submissions filed by them from time to time, and cited various decisions.

18. Mr.R.M.Desai, learned Advocate appearing on behalf of the applicant, submitted that in terms of the decree dated 18-12-1978 respondent Nos.1/A to 1/F, through their predecessor-in-title, were required to carry out some acts but had failed to comply with the terms of the decree and were thus liable to be evicted. That respondent Nos.2 to 61 who are claiming possession /

occupation of the premises through respondent Nos.1/A to 1/F are thus encroachers and/or in unauthorized occupation, there being no right with respondent Nos.1/A to 1/F to remain in possession of the premises. It was submitted that even as per the say of respondent Nos.1/A to 1/F admittedly, the said respondents had failed to make payment of compensation for user after 31-05-1986. That even the payment for subsequent period upto April 1987 stated to have been sent by Registered Post A.D. to the Company (in liquidation) and returned undelivered had not been made over to the applicant nor deposited with the Court; and, therefore, the default of respondent Nos.1/A to 1/F was established entitling the applicant to seek their eviction from the land in question. That the construction of superstructure by late Dhupsingh Charansingh itself was illegal and, therefore, subsequent action of renting out the same to third party was per se illegal, as late Dhupsingh Charansingh was merely an occupant of the premises as a permitted user as per decree dated 18-12-1978.

18.1 Adverting to the order of this Court dated 03-12-2003 and the Compliance Affidavit of Bhupatsingh Dhupsingh Chaudhary sworn on 19-12-2003, it was submitted that there was discrepancy in the affidavit of the said respondent vis-a-vis the averments made in Misc. Civil Application No.6 of 2002 : that the number of persons was at one place shown to be 60/61, at another place it was shown as 72 persons and at third place there were names of 83 persons as occupants; in such circumstances respondent No.1/F having made a wrong statement on affidavit was liable to be evicted for breach of the direction issued by this Court in its order dated 03-12-2003.

19. On behalf of respondent Nos.1/A to 1/F Mr.S.M.Shah, learned Advocate, contended that :

(a) this application is not competent and not maintainable and the applicant has to institute suit in appropriate Court;

(b) this Court has no jurisdiction to entertain this application;

(c) it is clear from the decree dated 18-12-1978 passed in Civil Suit No.1034 of 1974 that respondent Nos.1/A to 1/F are not in unauthorized occupation of the premises;

(d) Dhupsingh was in occupation of the land, he erected superstructure thereon, there was a dispute about nature of the right in 1962 between the Company and Dhupsingh and, therefore, respondent Nos.1/A to 1/F who have acquired title through Dhupsingh cannot be treated to be encroachers, and also the present proceedings are clearly barred by limitation.

Over and above the aforesaid contentions, reliance has been placed on Additional Affidavit filed by Shri Jitendra Dhupsingh dated 21-04-2003 to contend that the Company Petition seeking winding up of the Company had been filed in 1983, but as could be seen from the record respondent Nos.1/A to 1/F had made payment of rent to the Company upto 31-05-1986; that in April 1987, payment for the subsequent period was sent to the Company by Registered Post Acknowledgment Due but the same was returned as the Company was closed; and hence also, respondent Nos.1/A to 1/F cannot be treated as encroachers. That as such, rights of the Official Liquidator are limited as per decree dated 18-12-1978.

20. Mr.P.J.Kanabar, learned advocate appearing on behalf of respondent Nos.2 to 61 contended that the said 60 persons are staying with their family on the land in question and also, some of them are earning their livelihood by carrying on business activities on the said land. That their possession is legal and authorized as late Dhupsingh Charansingh had leased the land and/or the premises to the said respondents. In the affidavit dated 13-08-2002 it is stated "I further say that respondent Nos.2 to 61 are regularly paying rent to respondent Nos.1/A to 1/F". Attention was invited to further averment in the said affidavit that the said respondents i.e. Nos.2 to 61 are paying tax to Ahmedabad Municipal Corporation and for this purpose reliance was placed Annexure-I (collectively) whereunder copies of property tax bills have been annexed. It was also submitted by Mr.Kanabar that, therefore, a presumption be raised that the occupation of respondent Nos.2 to 61 is neither illegal nor contrary to the Rules and Regulations of Ahmedabad Municipal Corporation. In the alternative, Mr.Kanabar submitted on the basis of the affidavit dated 13-08-2002 that the Standing Committee of Ahmedabad Municipal Corporation vide resolution No.895 dated 28-07-1976 had recommended regularization of huts on government as well as private lands and also resolved to come out with a scheme to settle such encroachers; that the resolution had accordingly been approved in the meeting of the General Board held on 17-08-1976. That in

these circumstances also the occupation of respondent Nos.2 to 61 cannot be treated as illegal and/or unauthorized.

20.1 Mr.Kanabar further invited attention to the averments made in Misc. Civil Application No.6 of 2002 filed by respondent Nos.2 to 61 and to Annexure-I annexed to the said application wherein statement showing particulars of the tenure, rent, etc. of all the respondents was shown. Reliance was placed on judgment and decree dated 18-12-1978 made by the Court of City Civil Judge in Civil Suit No.1034 of 1974 in support of the contention that the said respondents are occupying the premises as tenants of deceased Dhupsingh Charansingh and the superstructure was constructed by late Dhupsingh Charansingh prior to 1955. A copy of the aforesaid decree has been annexed and marked as Annexure-II to the said application.

20.2 It was further submitted that the said respondents were not the employees of the Company (in liquidation) at any point of time and the rented premises occupied by them are of the ownership of respondent Nos.1/A to 1/F. That in the circumstances they were neither encroachers on the land of the Company (in liquidation) nor was their occupation in any way unauthorized; that the suit for possession of land in question had in fact not been decreed and as per the terms of compromise recorded in the decree the applicant was disentitled to dispossess the respondents.

20.3 Mr.Kanabar placed reliance on written submission dated 21-04-2003 primarily for the purpose of submitting that :-

(a) the application was barred by limitation; and

(b) there were various disputed questions of fact which could not be resolved summarily by this application.

20.4 In relation to the submission regarding the application being beyond period of limitation, reliance was placed on Articles 64 and 136 read with Section 27 of the Limitation Act, 1963 (hereinafter referred to as 'the Limitation Act') and Section 458-A of the Companies Act, 1956 (hereinafter referred to as 'the Act'). Mr.Kanabar placed reliance on decisions of M/s. R.C. Abrol & Co. (Pvt.) Ltd. Vs. M/s. A.R.Chadha & Co., AIR 1978 DELHI 167 and Karnataka Steel & Wire Products & Ors. Vs.

Kohinoor Rolling Shutters & Engg. Works & Ors., (2003) 1 SCC 76 to contend that Section 458-A of the Act was subject to the limitation prescribed under the provision of the Limitation Act and hence, provisions of Article 137 of the Limitation Act should be made applicable to the present application.

20.5 Reliance was also placed on provision of Section 15(2) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 ('the Rent Act' for short) to contend that the bar against sub-letting could not operate as they had been put in possession in 1955 by virtue of the agreement with deceased Dhupsingh Charansingh.

21. Mr.K.N.Patel, learned Advocate on behalf of respondent No.2, supported the action of the applicant i.e. the Official Liquidator on the basis of provisions of Section 13(1)(e) and Section 13(1)(ee) of the Rent Act as well as Section 23 of the Indian Contract Act. It was submitted that the subsequent order dated 22-01-2002 made by this Court staying the operation of earlier order dated 17-01-2002 be vacated and the liquidator be permitted to initiate process of eviction as well as recovery of occupation charges from respondent Nos.1/A to 1/F as directed by this Court.

22. Section 446 of the Act deals with the jurisdiction of a Company Court. Under sub-section (1) of Section 446 of the Act when a winding up order has been made or the Official Liquidator has been appointed as a provisional liquidator, there is a bar on institution of a suit, or commencement of other legal proceeding, or if such suit or legal proceeding is pending at the date of winding up order there is a bar against proceeding, further except by leave of the Court and subject to such terms as the Court may impose. Sub-sections (2) and (3) of Section 446 of the Act which are material for the present read as under :-

"[(2) The court which is winding up the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of--

(a) any suit or proceeding by or against the company;

(b) any claim made by or against the company (including claims by or against any of its branches in India);

(c) any application made under section 391 by or in respect of the company;

(d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company;

whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960.]

(3) Any suit or proceeding by or against the company which is pending in any court other than that in which the winding up of the company is proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by that court."

23. The scope and ambit of jurisdiction conferred on the High Court under Section 446(2) of the Act has been succinctly stated by this Court in the case of Rajratna Naranbhai Mills Co. Ltd. Vs. New Quality Bobbin Workers, [1973] 43 Company Cases 131 in the following words :-

"..... Section 446 which I have set out in extenso provides that the court which is winding up the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of any claim made by or against the company; any question of priorities or any other question whatsoever whether of law or fact, which may relate to or arise in course of the winding-up of the company. Sub-section (3) confers power upon the court to withdraw any proceeding either by the company or pending against the company in any court to itself and to dispose it of according to law. Therefore, when the High Court is conducting winding-up proceedings of a company ordered to be wound up, its jurisdiction is not confined to its ordinary jurisdiction but a special jurisdiction is conferred upon it by

section 446(2). If there is a suit or a proceeding by the company or against the company pending in any court, the same can be withdrawn and disposed of by the High Court. It may be that such a suit or proceeding would not ordinarily lie in the High Court. But, the High Court acquires jurisdiction because the company is being wound up and because special jurisdiction in respect of the companies which are ordered to be wound-up is conferred by sub-section (2) of Section 466. Scope and ambit of the jurisdiction can be properly inferred from clauses (b) and (d) of sub-section (2) set out above by me. The High Court would have jurisdiction to entertain and dispose of any claim made by or against the company. ....."

. . . . . .

"..... It is necessary to put liberal construction on section 446(2) so as to widen the jurisdiction of the High Court in dealing with all questions arising in winding up. Under the Companies Act, 1956, jurisdiction is conferred upon the High Court alone to entertain winding-up proceeding. It is in the interest of all concerned that winding-up proceeding shall be proceeded with expeditiously and brought to an end to avoid the agonies of large number of persons adversely affected by the fall of a company. The most important task assigned to the liquidator under the Companies Act while acting as liquidator of a company ordered to be wound up is to collect assets of the company and sell them and to distribute the realisation amongst all those who have claims against the company and payment must be made accordingly to priorities fixed by law. This appears to me not to be not only the foremost but the most basic duty of a liquidator of a company ordered to be wound up. Now, if the liquidator in course of winding up is required to file suits for recovering properties and assets of the company, one has only to imagine at what length of time winding-up proceedings can be brought to a close.

If a suit has to be filed it is implicit therein that it will have to go through the gamut of an appeal, second appeal, letters patent appeal and appeal to the Supreme Court. Winding-up proceedings would drag on interminably

over decades with consequent hardship to everyone. In order to avoid this situation, sub-sections (2) and (3) were incorporated in section 446 by which special jurisdiction has been conferred upon the High Court to entertain certain types of proceedings or also withdraw certain types of proceedings by or against the company in liquidation pending in any court and transfer to itself and to dispose of the same. Therefore, section 446(2) would enable the High Court to entertain an application of the nature filed by the official liquidator and to grant relief in the matter."

24. In the case of Sudarsan Chits (I) Ltd. Vs. G. Sukumaran Pillai & Ors., AIR 1984 SC 1579, the Apex Court has laid down as follows :

"To save the company which is ordered to be wound up from this profitless and expensive litigation and to accelerate the disposal of winding up proceedings, the Parliament devised a cheap and summary remedy by conferring jurisdiction on the Court winding up the company to entertain petitions in respect of claims for and against the company. This was the object behind enacting section 446(2), and, therefore, it must receive such construction at the hands of the Court as would advance the object and at any rate not thwart it. To accelerate the process of winding up so as to bring them (the proceedings) to an end, this sub-section was amended in its present form in 1960 conferring jurisdiction on the Court winding up the company to entertain among others any suit or proceedings by or against the company or any claim made by or against the company. If, therefore, a winding up petition is pending meaning thereby that an official liquidator is appointed as provisional liquidator which is a stage in the processes of winding up, the court before which such proceeding is pending can be styled as a court winding-up the company and ipso facto, it would have jurisdiction to entertain the proceedings enumerated in clauses (a) to (d) of sub-section (2) of section 466."

25. Thus, the object of Section 446 of the Act is to save the Company which is being wound up from unnecessary litigations and expenses and to protect its assets for equitable distribution amongst its creditors and its shareholders.

26. The contention that the applicant should be called upon to file a separate suit for recovering the property and cannot seek remedy by way of this application requires to be stated only to be rejected in light of the aforesaid settled legal position. As held by this Court the provision of Sections 446(2) and 446(3) of the Act have been specifically incorporated to ensure that the liquidator in course of winding-up is not required to file suits for recovering properties of the Company as otherwise it will become virtually impossible to order winding-up of a Company (in liquidation).

27. Under Section 446 of the Act, the legislative intent to permit the High Court from initiating proceedings straightway as if they were proceedings of the Court of an appropriate jurisdiction is clear; that there should be no impediment in the way of the liquidator, necessitating his getting involved in unnecessary litigation as there is public accountability after a winding-up order has been passed to determine the liquidation proceedings as expeditiously as possible, and tenants of companies under winding-up cannot stretch the winding-up proceedings to suit their personal interest. [Faizabad Distillers Pvt. Ltd. Vs. Salim Tailor, [1993] 76 Company Cases, 127 (All.)]

28. That once it is found that a person is a trespasser, proceedings under Section 446 of the Act are "due process of law", and the trespasser as such can be directed to be evicted, and such direction cannot be said to be without due process of law. [Vidyadhar Upadhyay Vs. Sree Sree Madan Gopal Jew, [1990] 67 Company Cases, 394 (Cal.)].

29. It is well settled that the law of procedure is a handmaid of justice and not its mistress and the Court can always make an order which is just and proper in the facts and circumstances of a case and it is immaterial as to what the prayers are in the application, and, particularly in a winding-up proceedings, whenever the Court discovers any property of the Company in the possession of anybody, since the Court is to administer justice and to prevent multiplicity of proceedings, when the fact of unauthorized occupation of the Company's asset or property by a person is clearly proved before the Court, the Court has ample power under Section 446(2)(a), (b), (d) and Section 468 read with Rule 9 of the Companies (Court) Rules, 1959, to pass such order as it may think proper, which the facts and circumstances of the case demand, for determining the rights of the parties. [Britannia Engineering Company Ltd., In re : [1983] 54 Company Cases 277]

30. In the case of Gajanan Dattatraya Vs. Sherbanu Hosang Patel & Ors., AIR 1975 SC 2156 it is held ".... The provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 indicate that a tenant is disentitled to any protection under the Act if he is within the mischief of the provisions of Section 13(1)(e), namely, that he has sublet. The language is that if the tenant has sublet, the protection ceases .....". In the present case, admittedly, respondent Nos.1/A to 1/F have sub-let the property to the 61 persons and in the circumstances, they are liable to be evicted.

31. Section 27 of the Limitation Act pertains to extinguishment of right to property. The section provides that at the determination of the period of limitation for institution of a suit for possession of any property, the right of such person to such property shall be extinguished. In other words, the section lays down the principle that where, for filing a suit for possession, the time expires, the right to property along with the remedy to recover possession will automatically extinguish. The consequence would be that on extinguishment of the owner's title to immovable property by virtue of bar of limitation for instituting a suit for possession, the title shall vest in the trespasser who will acquire the same by adverse possession.

32. Article 64 in the Schedule to the Limitation Act prescribes the period of limitation to be twelve years for possession of immovable property based on previous possession and not on title, from the date of dispossession. The conditions necessary for invoking this Article are that the suit should be for possession of immovable property; that the suit should be based on previous possession and not on title; and that the plaintiff must have been dispossessed while in possession of the property.

33. Article 136 under the Schedule to the Limitation Act provides for a period of limitation of twelve years for the execution of any decree (other than a decree granting a mandatory injunction) or order of any Civil Court. The period of limitation begins to run when the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place.

34. Where a decree directs the amount declared due to be paid in certain number of installment at certain specified period and further provides that on default, the entire amount outstanding shall become due, or that the decree-holder shall be entitled to seek possession of the property, on occurrance of default in payment of any one of the installments, it will be open in execution of the decree to the decree-holder to either seek recovery of the entire balance of the decretal amount or seek possession as per terms of the decree. A judgement-debtor in such circumstances cannot be heard to say that the decree holder must proceed to enforce the decree only in a particular manner and not in any other manner already provided in the decree.

35. Article 137 of the Schedule to the Limitation Act provides for a period of limitation of three years in respect of any other application for which no period of limitation is provided and the time from which the period begins to run is when the right to apply accrues.

36. Section 458-A of the Act provides for exclusion of certain time in computing period of limitation. The Section lays down that notwithstanding anything contained in the Limitation Act, or any other law for the time being in force, in computing the period of limitation prescribed for any suit or application in the name and on behalf of a Company which is being wound up by the Court, the period from the date of commencement of the winding up of the Company to the date on which the winding-up order is made (both inclusive) and a period of one year immediately following the date of the winding-up order shall be excluded. As to what is the effect of this provision, one may usefully refer to what has been laid down by the Apex Court in the case of Karnataka Steel & Wire Products & Ors. Vs. Kohinoor Rolling Shutters & Engg. Works & Ors., (2003) 1 SCC 76, wherein it is held that :-

"4. On a plain reading of the provisions contained in Section 458-A of the Companies Act, it is crystal clear that the aforesaid provision merely excludes the period during which a company was being wound up by the court from the date of the commencement of the winding up till the order of winding up is made and an additional period of one year immediately following the date of the winding up. In other words, in respect of a legally enforceable claim, which claim could have been made by the company on the date on which the application for winding up is made, could be

> filed by the official liquidator by taking the benefit of Section 458-A of the Companies Act and getting the period of four years to be excluded from the period of three years, as provided under Article 137 of the Limitation Act. The legislature, by way of an amendment, brought into force the provisions of Section 458-A, so that an official liquidator, who is supposed to be in custody of the assets and liabilities of the company, would be able to file a claim on behalf of the company, which was legally enforceable on the date of the winding up, after excluding the period, indicated under Section 458-A of the Companies Act, so that the company or its shareholders will not suffer any loss. But by no stretch of imagination, the said provisions contained in Section 458-A can be construed to mean that even a barred date (sic debt) or a claim which was not enforceable on the date of the winding up, would stand received, once a winding-up application is filed and order is made by virtue of Section 458-A of the Companies Act."

37. Though reference has been made to Section 27 Article 64 and Article 137 of the Limitation Act on behalf of 61 persons by Mr.Kanabar, it has not been shown as to how and in which manner the said provision would operate and apply to the facts of the present case. Once it is found that the period of limitation for institution of suit has not been determined there is no question of the right of a person seeking possession of property being extinguished. Similarly, the applicant herein is not seeking possession of immovable property based on previous possession and not on title, from the date of dispossession. In fact the application categorically states that the Company (in liquidation) is holding title to the land and it is on basis of such title that the possession is being sought. Therefore Article 64 of the Limitation Act cannot have any play. Similarly, Article 137 under the Schedule to the Limitation Act also cannot have any bearing on the controversy.

38. The decree was passed in Civil Suit No.1034 of 1974 on 18-12-1978 in favour of the Company (in liquidation) and against deceased Dhupsingh Charansingh. Applying Article 136 of the Limitation Act the period of twelve years for execution of the said decree will have to be computed taking into consideration that admittedly Dhupsingh committed default in making payment w.e.f. 01-06-1986; or in the alternative, if the case of the respondent Nos.1/A to 1/F is accepted, w.e.f. 01-05-1987

and hence the application for execution of the aforesaid decree could have been filed from 1986/87 upto 1998/99. The date of passing of winding-up order by this Court is 05-05-1989. This order came to be made in Company Petition No.33 of 1983 which was admittedly pending in 1986/1987. Considering provision of Section 458-A of the Act the period commencing from the initiation of winding up to the date when the order of winding-up is made plus one year more has to be excluded for the purpose of computing the period of limitation provided under the Limitation Act. Thus, from the year 1983 (when the Company Petition came to be filed) upto 05-05-1989 (that is the date of order of winding-up) and a period of one year more therefrom that is upto 05-05-1990 would be the period which will have to be excluded for the purpose of computing the period of limitation within which the application for execution of the decree can be filed. Therefore, the period of seven years commencing from 1983 upto 05-05-1990 would have to be excluded by operation of provision of Section 458-A of the Act; but as the default had taken place in 1986 the period of limitation of twelve years which would have commenced from the said date, would now commence from 05-05-1990 and would expire on 05-05-2002. As against that the present application has been admittedly filed on 26-09-2001. Therefore, on applying provisions of the Limitation Act (Article 136) read with Section 458-A of the Act it is apparent that the stand on behalf of the respondent Nos.1/A to 1/F and 61 persons that the application is barred by limitation cannot be accepted as the same is not supported by the provision of law and the facts on record.

39. Civil Suit No.1034 of 1974 had been filed by the Company against late Dhupsingh Charansingh and the prayer was that the hutments constructed by the defendant be removed and vacant and peaceful possession be handed over by the defendant to the plaintiff. In the said Civil Suit on 18-12-1978 vide Exh.17 the compromise pursis was presented by the parties and accordingly, the consent decree came to be made on 18-12-1978 wherein it was ordered that :-

(i) the plaintiff has filed the suit on the basis of permanent leasehold rights in relation to Asarva land Survey No.646 admeasuring 1785 sq. yds. and the defendant accepts the right of the plaintiff on the basis of permanent lease in favour of the plaintiff. That the defendant does not have actual possession of the land, but number of huts have been

constructed on the land and hence, the defendant is not in position to hand over actual possession of the land to the plaintiff;

(ii) the defendant has to pay Rs.6,400/= towards compensation of the land to the plaintiff for the period till date i.e. 18-12-1978 and for that purpose the defendant is required to pay Rs.300/= p.m. regularly from 18-12-1978, and if the defendant commits any default in paying monthly installment of Rs.300/=, the plaintiff would be entitled to recover the entire compensation in lump-sum from the defendant;

(iii) the defendant has to pay w.e.f. 01-12-1978 Rs.201/= (Rupees Two hundred one only) p.m. to the plaintiff being compensation for the land and the defendant is ready and willing to make the aforesaid payment to the plaintiff regularly;

(iv) the defendant is bound to pay Government and Municipal taxes in relation to the land and there is no liability of the plaintiff in relation to any such dues;

(v) if the defendant commits any default in making payment of the aforesaid compensation w.e.f. 01-01-1979 within the period of three months then the plaintiff will be entitled to take vacant and physical possession of the land from the defendant; and also will be entitled to recover the past amount of compensation personally or in any other manner.

40. Once it is established that there is failure by respondent Nos.1/A to 1/F (who are claiming through deceased Dhupsingh) to comply with the terms of decree of 18-12-1978 then the plaintiff becomes entitled to seek vacant and physical possession of the land from the defendant, i.e. the Company (in liquidation) becomes entitled to vacant and physical possession of the land from deceased Dhupsingh and all the persons claiming through the deceased Dhupsingh when the default in making payment of the compensation w.e.f. 01-06-1986 and sub-letting is admitted. Therefore, on a conjoint

reading of Term Nos.(iii) and (v) of the decree dated 18-12-1978 it is apparent that the respondents have not only defaulted but the Official Liquidator has become entitled to claim vacant and physical possession of the land from the respondents.

41. At this stage it is necessary to take note of the fact that this Court had specifically directed vide order dated 03-12-2003 that respondent Nos.2 to 61 shall deposit the amounts stated in Annexure-I to Misc. Civil Application No.6 of 2002 with the Official Liquidator every month regularly and collection shall be made by Bhupatsingh Dhupsingh respondent No.1/F herein. The Court has thereafter set out the timetable within which collection is to be made by respondent No.1/F and deposited with the Official Liquidator. It is pertinent to note that despite so-called Compliance Affidavit dated 19-12-2003 made by the said Shri Bhupatsingh Dhupsingh neither has any collection been made by him from respondent Nos.2 to 61 nor have respondent Nos.2 to 61 either deposited the amount every month nor shown willingness to make such deposit. The stand taken by respondent Nos.2 to 61, as conveyed through the Compliance Affidavit dated 19-12-2003, that the amounts stated in Annexure-I to Misc. Civil Application No.6 of 2002 are due and payable annually, is to say the least a dishonest attempt on part of respondent Nos.2 to 61 acting in collusion with respondent Nos.1/A to 1/F. The aforesaid order of 11-02-2004 clearly demonstrates this aspect and suffice it to state that Mr.P.J.Kanabar sought time to explain this situation but has not been able to place anything on record to show that such stand adopted by the respondents is in any manner supported by any evidence on record. There is one more aspect of the matter; on 03-12-2003 when this Court directed deposit of the amounts by respondent Nos.2 to 61 the direction was to deposit "every month regularly"; respondent No.1/F was directed to collect the amount "for each month by 10th day of the next month" and deposit with the Official Liquidator "by the 15th day of the said month". This order was made in presence of the learned advocates appearing on behalf of the respondents and no objection to the aforesaid direction was raised on the ground that amount stated in Annexure-I to Misc. Civil Application No.6 of 2002 was payable annually. Thus, what is stated in the affidavit dated 19-12-2003 sworn by respondent No.1/F is an afterthought conveniently presented so as to take a stand that the said respondents are not required to comply with direction of this Court every month. For the sake of argument, even if this stand is accepted it is apparent that, even as per say of respondent Nos.1/A to 1/F, they have not deposited any amount with the

Company (in liquidation) after 31-05-1986 (or say April 1987), which they could have very well done by depositing the said amount of compensation with the liquidator to show their bona fides.

42. In so far as respondent Nos.1/A to 1/F are concerned, it is an admitted position that they have defaulted in making payment of compensation as per decree w.e.f. 01-05-1986 (or at least from April 1987 onwards). Despite that this Court had granted them time vide order dated 03-12-2003 to ensure that they make the necessary payment. Here also it is an admitted position that no payment of compensation has been made by respondent Nos.1/A to 1/F nor have the 61 persons deposited the amount as directed by this Court on 03-12-2003. Therefore, there is admittedly default in complying with the directions issued by this Court. In the circumstances direction No. (iv) made in Paragraph 12 of the order dated 03-12-2003 would come into play entitling the Official Liquidator to move this Court for seeking eviction of the defaulters.

43. Therefore, even if, for the sake of argument, it could be accepted for a moment that the application as originally preferred had become barred by limitation, by virtue of the order dated 03-12-2003 the respondents have, by not complying with the directions, entitled the Official Liquidator to initiate steps and move this Court for seeking eviction of the defaulters.

44. On the other hand, a wholly untenable stand has been adopted by filing the so-called Compliance Affidavit dated 19-12-2003, wherein it is averred that according to 61 persons the amounts are payable annually. Even if for the sake of argument this contention is accepted, admittedly since 1986 no compensation has been paid over by respondent Nos.1/A to 1/F or the 61 persons even on an annual basis. This act itself goes to show that the aforesaid stand adopted by the said respondents is collusive in nature and does not reflect bona fides of respondent Nos.1/A to 1/F and the 61 persons. It is not even stated by respondent Nos.1/A to 1/F that 61 persons have not been paying compensation to them.

45. In so far as the contention raised on behalf of 61 persons paying tax to Ahmedabad Municipal Corporation is concerned, it is necessary to take note of the fact that in the entire bunch of copies of municipal bills produced on behalf of the said persons they are merely shown as occupiers while the property stands in the name of the Company (in liquidation). Thus, the said 61

persons have failed to show that they are having any valid title or right to occupy the property. It is trite law that the municipal authorities incorporate name of the occupiers of the premises only for the purpose of safeguarding the revenue in the event of the person who is primarily responsible for payment of Property Tax not being available. In fact, Property Tax by itself is a first charge on premises and in the circumstances, merely because 61 persons have been shown to be occupiers in the municipal assessment records they do not acquire any legal title or right qua the property of the Company (in liquidation).

46. Even otherwise as per Term No.(iv) of the decree dated 18-12-1978 the defendant was bound to pay Government and Municipal taxes in relation to the land. Thus, the respondents claiming through deceased Dhupsingh, the defendant, are even otherwise bound to pay the municipal taxes and cannot seek any remission qua the prayer for eviction on the basis of the payment of municipal taxes.

47. In the result, it is held that respondent Nos.1/A to 1/F, viz. the legal heirs of deceased Dhupsingh Charansingh, and 61 persons or any other person claiming through the deceased Dhupsingh or respondent Nos.1/A to 1/F have committed default in making payment of compensation in terms of decree dated 18-12-1978 and also the order dated 03-12-2003 made by this Court. The said persons are, therefore, liable to be evicted from the land in question being encroachers or unauthorized occupants of the premises.

48. In the circumstances, the directions issued by this Court on 17-01-2002 are hereby revived. In other words, it is directed that the Official Liquidator shall give a general notice to the occupants of the chawl that if the occupants do not hand over vacant and peaceful possession of the premises to the Official Liquidator within one week, the Official Liquidator will take possession of the premises with police protection as per the orders of this Court in the present proceedings.

The notice shall be in Hindi and Gujarati.

In case the notice is not complied with, it will be open to the Official Liquidator to move the police authorities and thereupon the Police Commissioner, Ahmedabad City shall provide all necessary police protection to the Official Liquidator for recovering possession of the premises from unauthorised occupants

and also for removing unauthorised construction put up on the land of Aryodaya Spinning Mills Ltd. (the Company in liquidation).

49. This Company Application is accordingly allowed and Rule is made absolute in Misc. Civil Application No.5 of 2002 and Misc. Civil Application No.6 of 2002 for the limited purpose as stated hereinbefore.

Sd/-
[D.A.MEHTA, J]

* * *

'Bhavesh'